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FISCAL IMPACT STATEMENT

LS 6493

BILL NUMBER: SB 206

NOTE PREPARED: Dec 21, 2009

BILL AMENDED:

SUBJECT: Enforcement of Wage Requirements.

FIRST AUTHOR: Sen. Mrvan

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill increases the penalties imposed on an employer whose violation of the state common construction wage law or minimum wage law involves an employee who is an illegal alien. The bill provides that a determination by a federal immigration agency that an alien has come to, entered, or remained in the United States in violation of law creates a rebuttable presumption that the alien is in the United States in violation of law.

Effective Date: July 1, 2010.

Explanation of State Expenditures: This bill will enhance penalties assessed against violating employers only if the violation in question involves an unauthorized alien. However, there may be additional state actions against violating employers to the extent that U.S. Immigration and Customs Enforcement (ICE) has substantiated worksite enforcement investigations that lead to arrests and prosecution under federal law. Any increase in state actions would depend on if ICE notifies the state of such violations and that otherwise would not have been discovered by the Department of Labor and result in state prosecution. As a result of any increase in state action against violating employers discovered by ICE, the Attorney General and court caseload may increase.

Currently, federal law prohibits employing unauthorized aliens in the United States. ICE reported that in FFY 2008 there were 5,184 administrative worksite enforcement arrests. It is not known how many of these federal arrests were prosecuted by the state for labor law or minimum wage violations.

Explanation of State Revenues: This bill increases the penalties assessed against employers, both contracted and noncontracted employers, who employ unauthorized aliens.

Penalty Enhancement:

Violation	Current Law Penalty	As Proposed: Violation Includes Unauthorized Alien
Contractor fails to pay appropriate rate of wages.	Class B misdemeanor	Class A misdemeanor
Employer discharges due to employee taking action to obtain payment rightfully owed, pays employee less than minimum wage, or fails to keep record of payment under IC 22-2-2-8.	Class C infraction	Class B infraction
Employer knowingly or intentionally violates minimum wage law (IC 22-2-2-4) or keeping record of payment under IC 22-2-2-8.	Class A infraction	Class C misdemeanor
Violation of IC 22-2-2-4 and has previous unrelated judgment for same offense.	Class B misdemeanor	Class A misdemeanor
Employer fails to keep record of payment under IC 22-2-2-8 and has a previous unrelated judgment for same offense.	Class B misdemeanor	Class A misdemeanor
Employer consistently discharges employees within four weeks of employment and replaces without work stoppage.	Class A infraction	Class C misdemeanor

(1) Revenue to the Common School Fund may increase if a person is sentenced for a Class A misdemeanor rather than for a Class B misdemeanor. The maximum fine for a Class B misdemeanor is \$1,000, while the maximum fine for a Class A misdemeanor is \$5,000.

(2) This bill increases the penalty under IC 22-2-2-8 from Class C infraction to Class B infraction. The maximum judgment for a Class C infraction is \$500, while the maximum judgment for a Class B infraction is \$1,000, which are both deposited into the General Fund.

(3) By changing a Class A infraction to Class C misdemeanor, the Common School Fund may experience increases in revenue while revenue to the General Fund decreases. Any change is likely to be small. Currently, the maximum judgment for a Class A infraction is \$10,000, which is deposited into the state General Fund, while the maximum fine for a Class C misdemeanor is \$500, which is deposited into the Common School Fund.

Explanation of Local Expenditures: This bill may increase court caseload to the extent that the federal government takes action against employers who employ unauthorized aliens in violation of state labor law and who otherwise might not have been discovered by the state. Any federal worksite enforcement actions taken would also have applicable state penalties to the extent that employed unauthorized aliens received wages in violation of current state law.

The maximum term of imprisonment for a Class B misdemeanor is up to 180 days, while the maximum term for a Class A misdemeanor is up to one year. However, any additional costs to local governments are likely to be small.

Class C misdemeanor: Local expenditures could increase if offenders are incarcerated in local jails instead

of being only fined. However, any cost increase is likely to be small. A Class C misdemeanor is punishable by up to 60 days in jail.

Explanation of Local Revenues: *Penalty Provision:* Local governments could receive additional revenues from any court fees that are collected for cases that were infractions and are now misdemeanors. All other court fees from penalties would remain unchanged under the bill.

State Agencies Affected: Department of Labor; Office of the Attorney General.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: U.S. ICE; U.S. Census Bureau.

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